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 99-0941

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 File Legal

MEMORANDUM FOR: Director of Central Intelligence
 Deputy Director of Central Intelligence

FROM : Anthony A. Lapham
 General Counsel

SUBJECT : Supreme Court Decision in Cyrus R. Vance,
Secretary of State, et al. v. Holbrook
Bradley, et al.

1. Action Requested. None; this memorandum is for information only.

2. Background. Last week I mentioned that, in an 8-1 decision, the Supreme Court had upheld the constitutionality of Section 632 of the Foreign Service Act of 1946, as amended, which mandates retirement at age 60 for any participant in the Foreign Service Retirement and Disability System below chief of mission and Presidential appointees. This decision has substantial meaning for the Agency in that it tends to dispel concerns about the continuing validity of similar mandatory retirement provisions of the CIA Retirement Act.

3. In Bradley, a group of former and present participants in the Foreign Service retirement system alleged that in establishing mandatory retirement at age 60 for Federal employees covered by the Foreign Service system, but not those covered by the Civil Service system, Congress violated constitutional guarantees of equal protection. When the suit was brought originally, the mandatory retirement age for employees covered by the Civil Service system was 70; at present, there is no mandatory retirement age for such employees.

4. The plaintiffs prevailed at the District Court level and, at least in part at our urging (see my attached letter to the Assistant Attorney General, Civil Division, noting that with some exceptions CIARDS participants are also subject to mandatory retirement of age 60), the Justice Department sought and obtained review in the Supreme Court. Among the noteworthy features of the resulting decision are the following:


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a. The Court said that it "will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that...(it)...can only conclude that the legislature's actions were irrational." The Government had stated that one of its legitimate and substantial goals was to assure the professional competence as well as the mental and physical reliability of Foreign Service personnel, and it had argued that the compulsory age 60 retirement furthered that goal by creating predictable promotion opportunities which, in turn, spurred morale and stimulated superior performance. In addition, it had been argued that mandatory retirement removed from the Service those officers that were sufficiently old so that they might be less equipped or ready to face the rigors of overseas duty. The Court's opinion accepted these arguments as at least rational, and it found that it had not been the intention of the Congress to reward "youth qua youth," but to stimulate the highest performance within the Foreign Service by assuring promotion opportunities.

b. Considerable attention was paid to the argument that Federal employees under the Civil Service retirement system also serve overseas and are not subject to mandatory retirement, with the Court noting that at any one time approximately 60 percent of the Foreign Service is assigned overseas while at the same time only approximately 5 percent of the Civil Service is so assigned. Given the special importance that Congress had attached to high performance in Foreign Service positions, the Court saw no warrant for upsetting the legislative judgment mandating early retirement for Foreign Service personnel, and the fact that Congress did not see fit to require early retirement by other classes of Federal employees did not justify a conclusion that the Foreign Service Act was unconstitutional.

c. The Court also stated that it was not incumbent upon the Government to demonstrate the impairments that may be associated with life overseas. On the contrary, it was incumbent upon those challenging the statute "to demonstrate that Congress has no reasonable basis for believing that conditions overseas are generally more demanding than conditions in the United States and that at age 60 or before many persons begin something of a decline in mental and physical reliability." In the eyes of the Court, no such showing was made.

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Att.

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